



City of Portsmouth
Planning Department
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Portsmouth, NH
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MEMORANDUM

TO: Zoning Board of Adjustment
FROM: Stefanie Casella, Planner
DATE: April 26, 2023
RE: Zoning Board of Adjustment May 16, 2023

The agenda items listed below can be found in the following analysis prepared by City Staff:

II. Old Business

- A. 635 Sagamore Avenue
- B. 4 Sylvester Street
- C. 9 Kent Street

III. New Business

- A. 276 Aldrich Road
- B. Appeal of Administrative Decision by Salem Manufactured Homes, LLC

II. OLD BUSINESS

- A. The request of **635 Sagamore Development LLC (Owner)**, for property located at **635 Sagamore Avenue** whereas relief is needed to remove existing structures and construct 4 single family dwellings which requires the following: 1) A Variance from Section 10.513 to allow four free-standing dwellings where one is permitted. 2) A Variance from Section 10.521 to allow a lot area per dwelling unit of 21,198 square feet per dwelling where 43,560 square feet is required. Said property is located on Assessor Map 222 Lot 19 and lies within the Single Residence A (SRA) District.

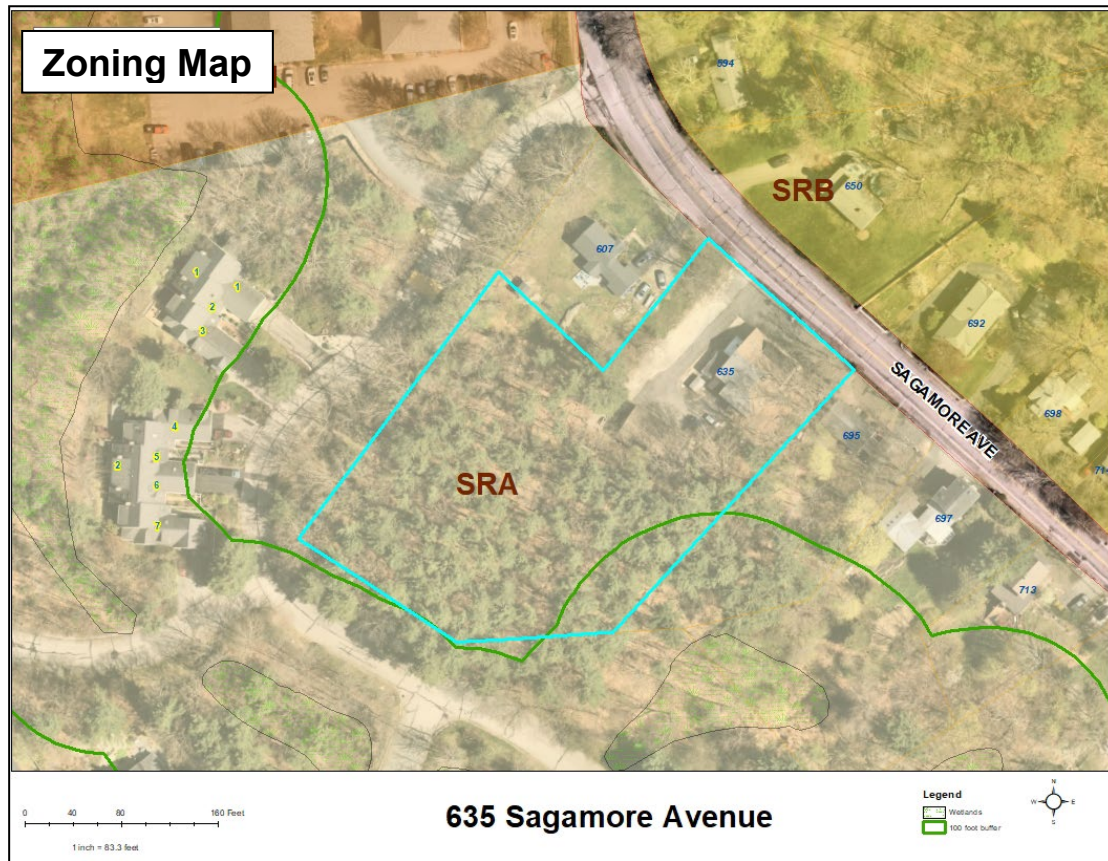
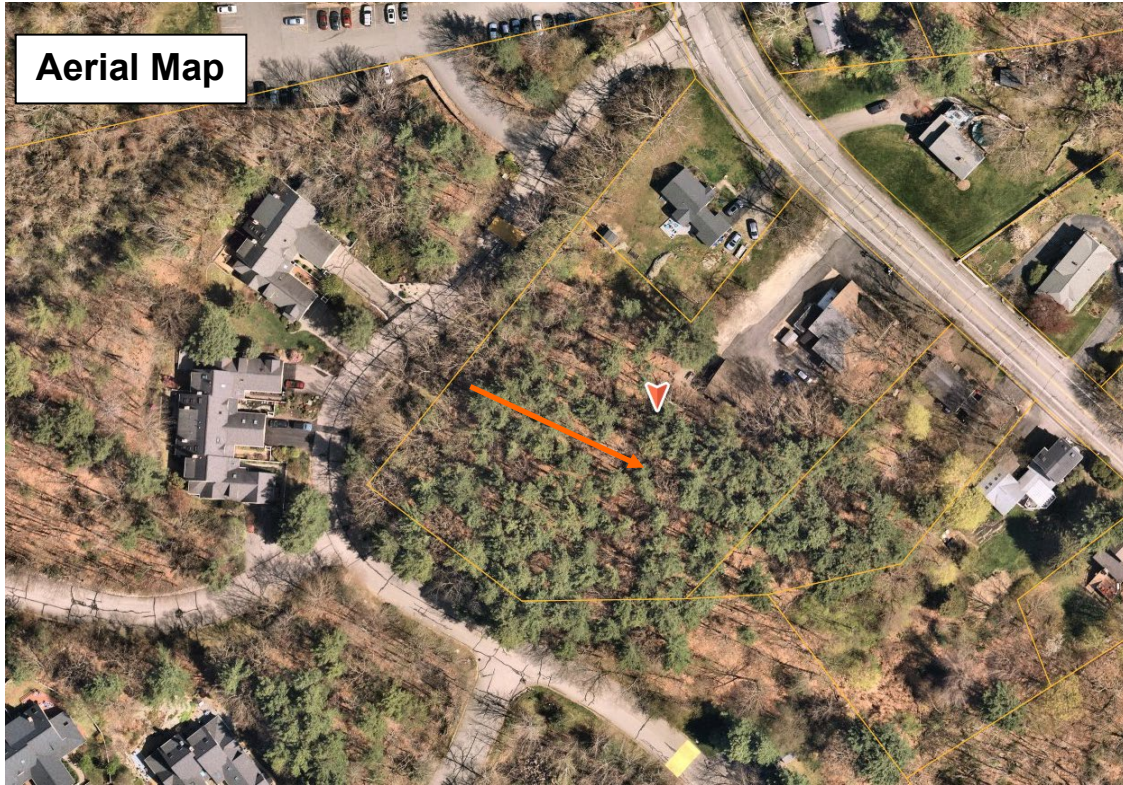
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Commercial w/ 1 apartment	4 single family dwellings	Primarily residential
<u>Lot area (sq. ft.):</u>	84,795	84,795	43,560 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	84,795	21,198	43,560 min.
<u>Lot depth (ft.):</u>	358	358	200 min.
<u>Street Frontage (ft.):</u>	160	160	150 min.
<u>Primary Front Yard (ft.):</u>	28	>30	30 min.
<u>Right Yard (ft.):</u>	60	>20	20 min.
<u>Left Yard (ft.):</u>	30	21	20
<u>Rear Yard (ft.):</u>	219	>40	40 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	4	9.2	10 max.
<u>Open Space Coverage (%):</u>	>50	81	50 min.
<u>Parking:</u>	4+	16	6
<u>Estimated Age of Structure:</u>	1950	Variance request(s) shown in red.	

Other Permits/Approvals Required

- TAC/Planning Board – Site Plan Review

Neighborhood Context



Previous Board of Adjustment Actions

April 19, 2022 – The BOA considered your application for remove existing commercial structure and construct 5 new single-family dwellings which requires the following: 1) A Variance from Section 10.513 to allow 5 principal structures on a lot where only 1 is permitted. 2) A Variance from Section 10.521 to allow a lot area per dwelling unit of 22,389 square feet where 1 acre per dwelling is required. The Board granted your request to **postpone** to the May meeting.

May 17, 2022 – The Board **granted** a request to postpone to the June meeting.

June 22, 2022 – The Board voted to acknowledge the **withdrawal** of the application.

November 15, 2022 - The Board **granted** a request to postpone to the June meeting.

December 20, 2022 - The Board **granted** a request to postpone to the June meeting.

January 17, 2023 - The Board **granted** a request to postpone to the March meeting.

Planning Department Comments

As shown in the history above, the applicant was before the Board this past spring with a proposal to construct 5 single family dwellings on one lot. Due to concerns from the abutters, the application was withdrawn so they could work on addressing concerns from the abutters. The new application proposes to demolish the existing structures and construct 4 free-standing single-family dwellings. The SRA zone requires 1 acre per dwelling unit and only allows 1 principal structure on a single lot. With 4 dwellings, the proposed lot area per dwelling will be 21,198, where 43,560 is required. With the exception of the density, all other dimensional requirements are in compliance with the proposed layout. This will require site plan review before TAC and Planning Board if the variances are granted. If granted approval, staff recommends the following stipulation for consideration:

1. **The design and location of the dwellings may change as a result of Planning Board review and approval.**

Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The “unnecessary hardship” test:*
 - (a) *The property has special conditions that distinguish it from other properties in the area.*

AND

 - (b) *Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.*

OR

 - (c) *Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.*

10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

II. OLD BUSINESS

- B. The request of **Jared J Saulnier (Owner)**, for property located at **4 Sylvester Street** whereas relief is needed to subdivide one lot into two lots which requires the following: Proposed Lot 1: 1) Variances from **Section 10.521** to allow a) a lot area and lot area per dwelling of 9,645 square feet where 15,000 is required for each; b) 80 feet of lot depth where 100 feet is required; and c) a 9 foot right side yard where 10 feet is required. Proposed Lot 2: 1) Variances from Section 10.521 to allow a) a lot area and lot area per dwelling unit of 6,421 square feet where 15,000 is required for each; b) 40 feet of street frontage where 100 feet is required; and c) 80 feet of lot depth where 100 feet is required. Said property is located on Assessor Map 232 Lot 36 and lies within the Single Residence B (SRB) District. (LU-23-27)

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>		<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family Home	Lot 1	Lot 2	Primarily residential
<u>Lot area (sq. ft.):</u>	16,067	9,645	6,421	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	16,067	9,645	6,421	15,000 min.
<u>Lot depth (ft.):</u>	80	80	80	100 min.
<u>Street Frontage (ft.):</u>	200.01	119.9	40	100 min.
<u>Primary Front Yard (ft.):</u>	7.95	7.95	n/a	30 min.
<u>Right Yard (ft.):</u>	>10	9	10	10 min.
<u>Left Yard (ft.):</u>	9.7	9.7	10	10
<u>Rear Yard (ft.):</u>	33.9	33.9	30	30 min.
<u>Height (ft.):</u>	21.75	21.75	n/a	35 max.
<u>Building Coverage (%):</u>	11.1	18.5	0	20 max.
<u>Open Space Coverage (%):</u>	78.8	67.2	100	40 min.
<u>Parking:</u>	2	2	n/a	2
<u>Estimated Age of Structure:</u>	1910		Variance request(s) shown in red.	

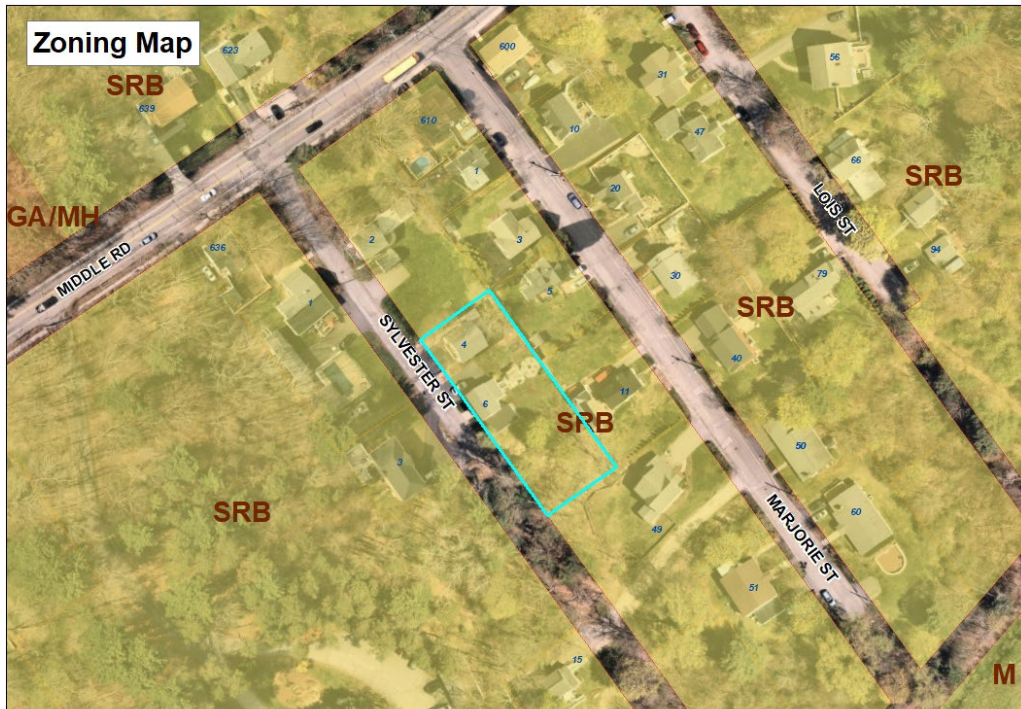
Other Permits/Approvals Required

- Subdivision Review and Approval – TAC and Planning Board

Neighborhood Context



Aerial Map



Zoning Map

0 40 80 160 Feet
1 inch = 66.5 feet

4 Sylvester Street



Previous Board of Adjustment Actions

No previous BOA history found.

Planning Department Comments

The applicant is proposing to divide the existing lot into two 2 lots. As the road dead ends at the applicant's property the applicant is proposing to extend the public road by 40 feet to provide access to the new lot.

Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The "unnecessary hardship" test:*
 - (a) *The property has special conditions that distinguish it from other properties in the area.*

AND

 - (b) *Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.*

OR

 - (c) *Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.*

10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

II. OLD BUSINESS

- C. The request of **Cynthia Austin Smith and Peter (Owners)**, for property located at **9 Kent Street** whereas relief is needed to demolish the existing two-family and construct a single-family dwelling which requires the following: 1) Variances from Section 10.521 to allow a) a lot area and lot area per dwelling of 5,000 square feet where 7,500 square feet is required for each; b) 53% building coverage where 25% is the maximum allowed; c) a 4.5 foot rear yard where 20' is required; d) a 0.5 foot side yard where 10 feet is required; e) a 0 foot front yard where 11 feet is allowed under Section 10.516.10; and f) a 9.5 foot secondary front yard where 13 feet is allowed under Section 10.516.10. 2) A Variance from Section 10.515.14 to allow a 1.5 foot setback for a mechanical unit where 10 feet is required. Said property is located on Assessor Map 113 Lot 42 and lies within the General Residence A (GRA) District. (LU-23-28)

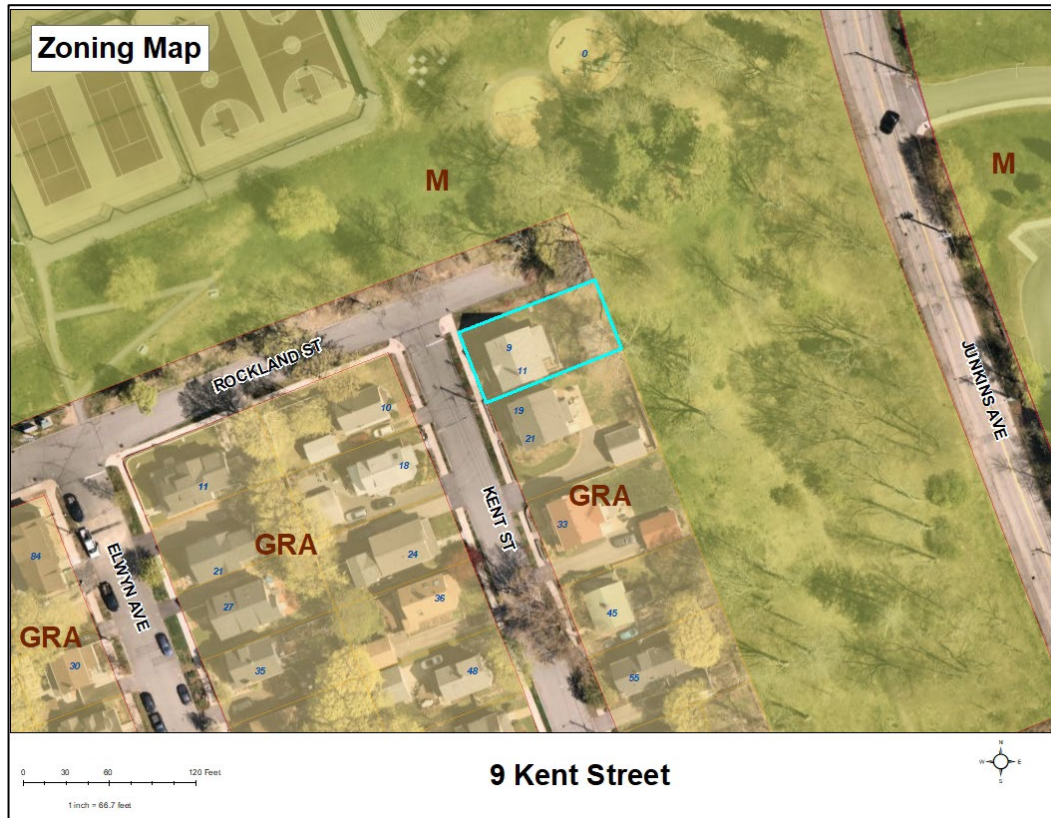
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Two-family	Demo structure and construct new single unit	Primarily residential
<u>Lot area (sq. ft.):</u>	5,000	5,000	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,000	5,000	7,500 min.
<u>Street Frontage (ft.):</u>	50'+	50' +	100 min.
<u>Lot depth (ft.)</u>	100	100	70 min.
<u>Primary Front Yard (ft.):</u>	7	0	11 (using front yard averaging in 10.516.10) min.
<u>Secondary Front Yard (ft.):</u>	16	9.5	13 (using front yard averaging in 10.516.10) min.
<u>Right Yard (ft.):</u>	0.5	0.5	10 min.
<u>Rear Yard (ft.):</u>	6	4.5	20 min.
<u>Height (ft.):</u>	<35	35	35 max.
<u>Building Coverage (%):</u>	35	53	25 max.
<u>Open Space Coverage (%):</u>	63.5	33	30 min.
<u>Parking</u>	0	2 (2 car garage)	2
<u>Estimated Age of Structure:</u>	1900	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

July 19, 1988 – Relief from Zoning Ordinance including:

Variance from Article III, Section 10-302 are requested: a) construction of 4' x 20' rear egress stairs from the second floor to rear yard with 33% building lot coverage in a district where the maximum building lot coverage allowed is 20% and b) construction of said stairs with a 2 ½' right yard where a 10' side yard is the minimum in this district.

The Board voted to **grant** the request as advertised.

Planning Department Comments

The applicant is requesting relief from multiple dimensional standards to demolish the existing structure, construct a single living unit, and add new backyard features.

For this project, the complete demolition of the existing structure creates a vacant lot and will require relief for both the proposed structure dimensions that do not meet zoning and for the non-conforming dimensions of the lot. See Section 10.311 copied below for reference.

***10.311** Any lot that has less than the minimum lot area or street frontage required by this Ordinance shall be considered to be nonconforming, and no use or structure shall be established on such lot unless the Board of Adjustment has granted a variance from the applicable requirements of this Ordinance.*

At the request of staff, applicant presented the project to the Technical Advisory Committee at a Work session for the review of public infrastructure impacts as they relate to the project.

May 8 Update:

On May 8, 2023 the applicants submitted a revised foundation plan after receiving input from the abutter. The changes are summarized in the letter dated May 10, 2023 from Jennifer Ramsay and are as follows: the right side of the structure will be 3 feet narrower on the basement level, the new building will be the same in every other aspect and dimension.

Variance Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
 2. *Granting the variance would observe the spirit of the Ordinance.*
 3. *Granting the variance would do substantial justice.*
 4. *Granting the variance would not diminish the values of surrounding properties.*
 5. *The “unnecessary hardship” test:*
 - (a) *The property has special conditions that distinguish it from other properties in the area.*
 - AND**
 - (b) *Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.*
- OR**

Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

III. NEW BUSINESS

- A.** The request of **Angela Davis and Katherine Nolte (Owners)**, for property located at **276 Aldrich Road** whereas relief is needed to construct a 5 foot by 4 foot landing which requires the following: 1) Variance from Section 10.521 to allow a) 3 foot secondary front yard where 30 feet is required; and b) 35% building coverage where 20% is allowed. 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 116 Lot 14 and lies within the Single Residence B (SRB) District. (LU-23-29)

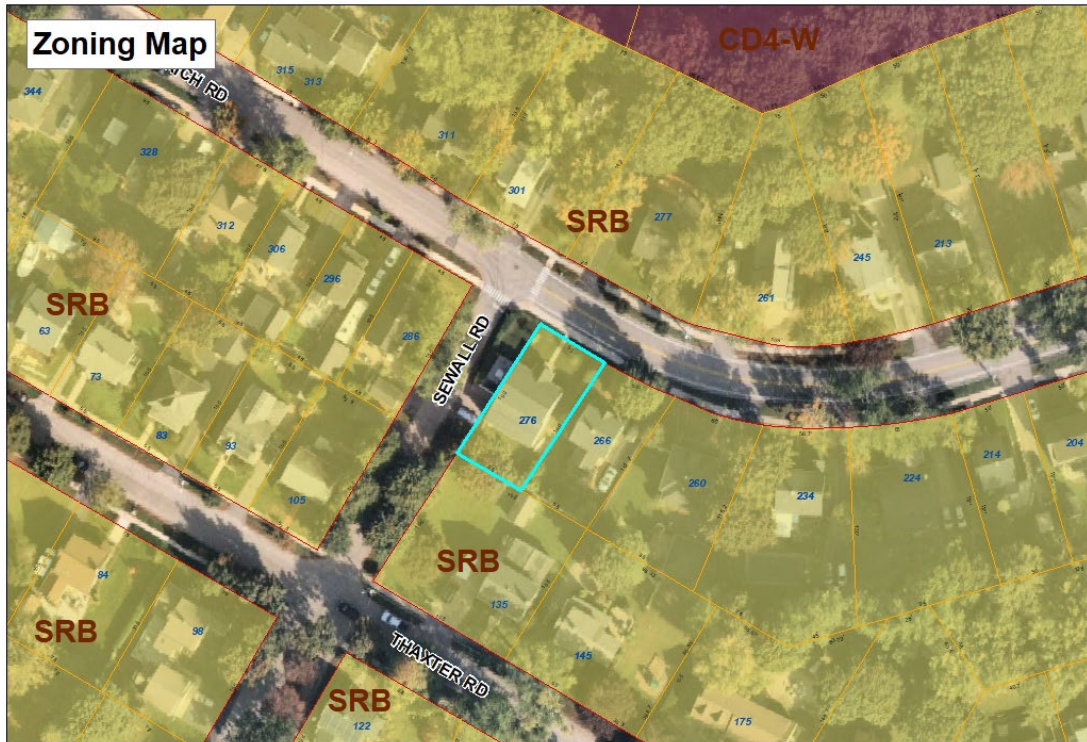
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use</u>	Single family	Construct a porch	Primarily residential
<u>Lot area (sq. ft.):</u>	4,792	4,792	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	4,792	4,792	15,000 min.
<u>Lot depth (ft.):</u>	100	100	100 min.
<u>Street Frontage (ft.):</u>	150	150	100 min.
<u>Aldrich Front Yard (Primary)(ft.):</u>	25	25	30 min.
<u>Seawall Rd Front Yard (Secondary) (ft.):</u>	7.5 (previously granted)	3	30 min.
<u>Left Yard (ft.):</u>	7.5 (previously granted)	7.5	10 min
<u>Rear Yard (ft.):</u>	26	26	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	33 (previously granted)	35	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1910	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



0 35 70 140 Feet
1 inch = 66.7 feet

276 Aldrich Road



Planning Department Comments

The applicants are seeking to construct a 5' by 4' landing on the right side of the house. The house is nonconforming on the side and secondary front off of Sewall Road. The front yard is compliant per Section 10.516.10 for existing alignments of the averaging of houses within 200 feet on the same side of the street. The new porch will result in 35% building coverage where 20% is the maximum. On May 24, 2022 the applicants obtained relief for a new front porch which is currently under construction.

Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The "unnecessary hardship" test:*
 - (a) *The property has special conditions that distinguish it from other properties in the area.*
AND
 - (b) *Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.*
OR
Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

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Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

III. NEW BUSINESS

- B. Petition of **Salem Manufactured Homes, LLC**, for Appeal of an Administrative Decision to require a variance for the expansion of a non-conforming structure in accordance with Section 10.321 if the Zoning Ordinance for property located at 210 Oriental Gardens. Said property is located on Assessor Map 215 Lot 9-21 and lies within the Gateway Corridor (G1) District. (LU-23-43)

Neighborhood Context



0 40 80 160 Feet
1 inch = 84.6 feet

210 Oriental Gardens



Planning Department Comments

The applicant is appealing the determination of the Planning and Sustainability Director that a variance is required to grant a building permit for the replacement of a larger manufactured housing structure than the structure that was removed given the standards set forth in Section 10.321 of the Zoning Ordinance (provided below).

***10.321** A lawful nonconforming building or structure may continue and be maintained or repaired, but may not be extended, reconstructed or enlarged unless such extension, reconstruction or enlargement conforms to all the regulations of the district in which it is located.*

The letter of decision from the Planning and Sustainability Director is included in meeting packet for the Boards reference.